

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

FILED

2021 MAR 15 AM 11:18

**CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:) Chapter 11
W. R. Grace & Co, et al.) Case No. 01-01139 (AMC)
Reorganized Debtors.) (Jointly Administered)
)
)
)
_____)

MOTION TO STRIKE SUPPLEMENTAL LETTER BRIEF dated February 16, 2021, submitted to the Bankruptcy Court by W.R. Grace & Co. Attorney Roger J. Higgins on or about February 16, 2021

Claimant Gary S. Smolker moves the Court to strike the supplemental letter brief dated February 16, 2021 signed by W.R. Grace & Co. Attorney Roger J. Higgins filed with the Bankruptcy Court on or about February 16, 2021.

On April 2, 2001, W.R. Grace & Co. and 61 affiliated companies commenced their chapter 11 cases.

On August 27, 2001, Gary S. Smolker's ("SMOLKER'S) Proof of Claim for personal injury and property damage, dated June 6, 2001, was filed with the United States Bankruptcy Court for the District of Delaware, as Claim No. 392, in Chapter 11 Bankruptcy Case Number 01-01139.

On August 3, 2020, the above captioned reorganized debtors ("GRACE") filed a Motion for Summary Judgment for Disallowance of Proof of Claim No. 392 filed by Gary S. Smolker ("SMOLKER") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, on August 27, 200.

In its Motion for Summary Judgment, GRACE argues that dismissal of SMOLKER'S action against GRACE in the Los Angeles Superior Court for SMOLKER'S alleged failure to timely bring SMOLKER'S action against GRACE to trial in the Los Angeles Superior is *res judicata* – is a complete bar to SMOLKER pursuing any claim against GRACE in this bankruptcy case.

At a hearing on GRACE'S Motion for Summary Judgment before U.S. Bankruptcy Judge Ashely M. Chan on February 1, 2021, Judge Chan stated that Judge Chan agreed with Claimant SMOLKER that dismissal of the Superior Court action for SMOLKER allegedly failing to timely bring his action against GRACE to trial in the Los Angeles Superior court was not *res judicata* - does not prevent SMOLKER from pursuing SMOLKER'S claims against GRACE in this bankruptcy case.

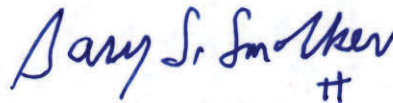
At the conclusion of the February 1 hearing, Judge Chan invited GRACE to submit a supplemental brief on that single issue.

On or about February 16, 2021, GRACE submitted a Supplemental Legal Brief dated February 16, 2021 signed by GRACE'S attorney Roger J. Higgins, Esq.

The Supplemental Legal Brief dated February 16, 2021 submitted by GRACE addresses legal issues GRACE was not given permission to brief. Therefore GRACE'S Supplemental Legal Brief dated February 16, 2021 should be stricken.

Dated: March 12, 2021

Respectfully submitted,

A handwritten signature in blue ink that reads "Gary S. Smolker" with a small "H" or similar mark below the name.

Gary S. Smolker, Claimant, In Pro Per
Email: GSmolker@aol.com
CELL PHONE: 1-310-749-9735
Office Phone: 1-818-788-7290

Gary S. Smolker
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Case No. 01-01139 (AMC) (Jointly Administered)

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I am a resident of the State of California, over the age of eighteen years, and not a party to this action. My business address is 16055 Ventura Blvd., Suite 525, Encino, CA 91436. On March 12, 2021, I served the following titled and attached document:

**MOTION TO STRIKE SUPPLEMENTAL LETTER BRIEF DATED
FEBRUARY 16, 2021 submitted to the Bankruptcy Court by W.R. GRACE &
Co. Attorney Roger J. Higgins on or about February 16, 2021**

X VIA MAIL, by placing a true copy of the documents listed above in a sealed envelope with postage fully prepaid in United States mail in the State of California, at Encino, California, addressed as set forth below:

Law Offices of Roger Higgins, LLC, Attention Roger Higgins, Esq., 516 North Ogden Ave., Suite 136, Chicago, Illinois 61642

Pachulski Stang Ziehl & Jones, LLP, Attention James E. O'Neill, Esq., 919 North Market Street, 17th floor, Wilmington, Delaware, 19899-8705

X BY FEDERAL EXPRESS: ORIGINAL SENT FOR FILING WITH THE
UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF
DELAWARE VIA FEDERAL EXPRESS OVERNIGHT MAIL

United State Bankruptcy Court for the District of Delaware
Office of the Clerk
824 Market Street
Wilmington, Delaware 19801

Executed on March 12, 2021 at Encino, California. I declare under penalty of perjury under the laws of the United States that the above is true and correct.


Sabrina Jones